(27)

**HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR**
**DIVISION BENCH**

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**CORAM : HON'BLE SHRI H.L. DATTU, CJ &**
**HON'BLE SHRI V.K. SHRIVASTAVA, J.**

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**MISC. APPEAL (C) NO. 401 OF 2007**

**APPELLANTS**

1) Smt Harimati Sahu, aged about 27 years, Wife of late Rameshar Sahu

2) Raj Kumar Sahu, aged about 11 years, S/o Rameshar Sahu

3) Ku Rajkumari Sahu, aged about 8 years, S/o Late Rameshar Sahu

4) Raju Sahu, aged 4 years, son of late Rameshar Sahu,

No.2 to 4 minors through mother appellant no.1 Smt Harimati Sahu, Wd/o. Late Rameshar Sahu

All resident of village & post Godhna, Via - Kharod, PS Shivrinarayan, District - Janjgir - Champa (CG)

Versus

**RESPONDENTS**

1) Borra Ram Sahu S/o Fuduram Sahu, R/o Village Godhna, Tahsil Nawagarh, PS Shivrinarayan, District - Janjgir - Champa (CG)

2) United India Insurance Company Limited, through Divisional Manager, Divisional Office Stadium Road, Transport Nagar, Korba, District - Korba (CG)

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**Present :** Shri Gautam Kshetrapal, counsel for the appellants.

None for the respondents.

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**ORAL ORDER**
**(Passed on 2nd April, 2007)**

The following oral order of the Court was passed by **Vijay Kumar Shrivastava, J.**

This is an appeal under Section 30 of the Workmen Compensation Act, 1923 (henceforth "the Act") against the order dated 24.01.2007, passed by the Commissioner, Workman Compensation/Labour Court, Bilaspur, District Bilaspur (CG) (henceforth "the Commissioner") in claim case No.389/WCA/04 (F) CLAIM, whereby compensation of Rs.2,23,317/- has been awarded in favour of the claimants / appellants.

2) Factual matrix of the case, in brief, is that Rameshar Sahu (since deceased) was an employee of respondent No.1, who was working as labourer in tractor bearing registration No.CG-11-A-1594 and trolley bearing registration No.CG-11-A-1593 (henceforth "the offending vehicle"). The offending vehicle was owned by respondent No.1 and was insured with respondent No.2. On 09.02.2004, deceased on the instruction of respondent No.1 went on tractor to carry stones for construction of a well in the agricultural farm. After loading stones in the trolley, carrying deceased and all other labourers, the tractor

was coming back. On way, the trolley turned turtle, deceased received fatal injuries and succumbed to those. Respondent No.1 did not pay compensation to legal representatives of the deceased. Therefore, they claim compensation, penalty and interest under Section 10 of the Act against respondent No.1.

3) Respondent No.1 remained *ex parte* and did not contest the claim, whereas respondent No.2 contested the claim.

4) The Commissioner after appreciating the material on record allowed compensation of Rs.2,23,317/- and also allowed penalty Rs.10,000/- and interest @ 6% per annum. The Commissioner further held that Insurance Policy does not cover the risk of deceased, accordingly, passed the impugned order against respondent No.1.

5) Heard learned counsel for the appellants. Appellants proposing following substantial questions of law, contended that the Commissioner did not allow just and proper compensation and erred in exonerating the Insurance Company.

Substantial questions of law proposed by the appellants :

1) Whether the income of the deceased, assessed by the Commissioner is correct according to law ?

2) Whether the claims tribunal has properly appreciated the evidence available on record ?

3) Whether Commissioner has rightly exonerated the insurance company ?

4) Whether appellants are entitled for penalty interest from respondent No.1 ?

6) We have gone through the order passed by the Commissioner. The Commissioner has allowed penalty and interest; after considering all the material, has assessed the income of the deceased and allowed the compensation. Claim was filed against respondent No.1. Even otherwise, the grounds for exonerating the Insurance Company does not appear to be illegal.

7) Finding of facts recorded by the Commissioner is not perverse. Even the finding recorded by the Commissioner does not appear to be illegal or infirm. We do not find any question of law involved in the appeal, what to say of a substantial question of law. Therefore, the appeal is liable to be dismissed and is accordingly dismissed *in limine*. No costs.

Sd/-
V.K.Shrivastava
Judge

**Sd/-**
**Chief Justice**